

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF VIRGINIA  
Harrisonburg Division

JOANNE HARRIS, et al, )  
Plaintiffs )  
v. ) Civil Action No.: 5:13-cv-77  
ROBERT F. McDONNELL, et al, )  
Defendants )

**ANSWER OF DEFENDANT THOMAS E. ROBERTS**

Defendant Thomas E. Roberts, by counsel, files his Answer to the Complaint as follows:

1. With regard to paragraph 1, Defendant is without sufficient information to admit or deny allegations personal to Plaintiffs.
2. With regard to paragraph 2, Defendant is without sufficient information to admit or deny factual allegations in paragraph 2. Defendant is not required to answer the legal conclusions contained in paragraph 2.
3. With regard to paragraph 3, Defendant denies that he discriminated against Plaintiffs or otherwise violated their constitutional rights. Defendant denies that he has the legal authority to grant them a marriage license under the current law, and denies that he has the power or authority to declare Virginia's law unconstitutional.

4. With regard to paragraph 4, Defendant is without information to admit or deny factual allegations in paragraph 4. Defendant is not required to answer the legal conclusions contained in paragraph 4.

5. With regard to paragraph 5, Defendant is without information to admit or deny factual allegations in paragraph 5. Defendant is not required to answer the legal conclusions contained in paragraph 5.

6. With regard to paragraph 6, Defendant is without information to admit or deny factual allegations in paragraph 6. Defendant is not required to answer the legal conclusions contained in paragraph 6. Defendant denies that he discriminated against Plaintiffs or otherwise violated their constitutional rights. Defendant denies that he has the legal authority to grant them a marriage license under the current law, and denies that he has the power or authority to declare Virginia's law unconstitutional.

7. Defendant is without sufficient information to admit or deny the allegations contained in paragraphs 7-17, including all subparts.

8. The allegations in paragraphs 18-33, including all subparts, do not concern the claim against this Defendant and so no response is required. To the extent a response is required, Defendant is without sufficient information to admit or deny the allegations in those paragraphs.

9. The allegations in paragraphs 34-35, including all subparts, concern other defendants so no response is required. To the extent a response is required, Defendant is without sufficient information to admit or deny the factual allegations and no response is required as to any legal conclusions asserted.

10. The allegations in paragraph 36 assert conclusions of law to which no response is required. Defendant states that the limits of his authority are set by Virginia Constitution and statute and that he has no discretion to issue a marriage license to a same-sex couple.

11. The allegations in paragraph 37 assert conclusions of law to which no response is required. Defendant states that the limits of his authority are set by Virginia Constitution and statute and that he has no discretion to issue a marriage license to a same-sex couple.

12. The allegations in paragraphs 38-42, including all subparts, assert conclusions of law to which no response is required. Defendant admits that jurisdiction and venue are proper.

13. With respect to paragraphs 43-44, including all subparts, Defendant is without sufficient information to admit or deny the factual allegations personal to plaintiffs. Defendant denies that he has the authority to issue them a marriage license under the current law. Defendant is not required to answer with respect to Plaintiffs Bergoff and Kidd as they do not assert claims against him.

14. Defendant denies the allegations in paragraph 45.

15. Defendant is not required to answer the allegations in paragraph 46 as they concern Plaintiffs Bergoff and Kidd who do not assert claims against him.

16. With regard to paragraphs 47-48, including all subparts, Defendant is without information to admit or deny factual allegations in those paragraphs. Defendant is not required to answer the legal conclusions contained in those paragraphs. Defendant denies that class certification is appropriate in this case.

17. With regard to paragraphs 49-59, including all subparts, Defendant is without information to admit or deny factual allegations in those paragraphs. Defendant is not required to answer the legal conclusions contained in those paragraphs. Defendant takes no position on the constitutionality of Virginia law.

18. With regard to paragraph 60, Defendant is without information to admit or deny factual allegations in paragraph 60. Defendant is not required to answer the legal conclusions contained in paragraph 60. Defendant denies that he instructed anyone that relationships between same sex couple are less worthy than others. Defendant has no authority or discretion to issue a marriage license to a same-sex couple and this lack of authority and discretion is beyond his control.

19. With regard to paragraph 61, Defendant is without information to admit or deny factual allegations in paragraph 61. Defendant is not required to answer the legal conclusions contained in paragraph 61. Defendant denies that he “confers” marital status on anyone or that he defines “family.” Defendant denies that he encouraged disrespect of same-sex couples. Defendant has no authority or discretion to issue a marriage license to a same-sex couple and this lack of authority and discretion is beyond his control.

20. With regard to paragraphs 62-73, including all subparts, Defendant is without information to admit or deny factual allegations in those paragraphs, and Defendant is not required to answer the legal conclusions contained in those paragraphs. Defendant takes no position on the constitutionality of Virginia’s laws.

21. Defendant denies the allegations in paragraphs 74-80 including all subparts.

22. With regard to paragraphs 81-118 including all subparts, Defendant takes no position on the constitutionality of Virginia's marriage laws. Defendant admits that he has no authority or discretion to issue a marriage license to a same-sex couple and this lack of authority and discretion is beyond his control. Defendant denies that class certification is appropriate in this case.

23. With regard to paragraphs 119-122 including all subparts, Defendant takes no position on the constitutionality of Virginia's marriage laws. Defendant admits that he has no authority or discretion to issue a marriage license to a same-sex couple and this lack of authority and discretion is beyond his control. Defendant denies that class certification is appropriate in this case. Defendant denies that he has committed any affirmative act or omission that violated Plaintiffs' constitutional rights. To the extent Plaintiff's constitutional rights have been violated, they were violated by virtue of existing law over which Defendant has no authority to change, ignore, or declare unconstitutional.

24. Defendant denies any allegations not specifically addressed herein.

25. Defendant admits that he does not have the legal authority to issue a marriage license to a same-sex couple. Defendant admits that he is subject to criminal penalties if he acts outside the scope of his authority and issues a marriage license to a same-sex couple. Consequently, Defendant is not able to issue a marriage license to a same-sex couple until such time as he is given the legal authority and legal mandate to do so.

26. Defendant objects to class certification.

27. Defendant asserts he is entitled to sovereign immunity under the Eleventh Amendment as he has no duties relative to the enacting or modifying of Virginia's marriage laws.

THOMAS E. ROBERTS,

By Counsel

By: /s/ Rosalie Pemberton Fessier

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#### CERTIFICATE OF SERVICE

I hereby certify that on January 22, 2014, I have electronically filed this document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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